JUN 10

In the

SUPREME COURT of the UNITED STATES

No. 74-1591

JUNE TERM

ROSEMARY WILLIAMS PRO SE:
PETITIONER

vs.

C. E. (CAP) NICHOLS ET AL:
RESPONDENT

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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2. Is a confession or admission of the crime for which defendant is subsequently convicted, and also related actions showing a pattern of similar offenses, admissible into evidence when secured from defendant by a special agent for the F.B.I. who, upon being informed by defendant that he waives his right to counsel, makes materially false statements of the law? 2

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Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

A copy of the opinion of the United States court of appeals for the Fifth Circuit affirming the judgment of conviction of petitioner in the United States District Court for the District of Texas is attached as Appendix "A." The subject opinion was not published, and a copy of opinion of the Fifth Circuit affirming Appendix "1." and "2." mandate stayed "A.-3.".

JURISDICTION

This court has jurisdiction to review the decision of the Fifth Circuit Court of Appeals pursuant to 28 U.S.C. § 1254 (1.) The judgment of guilty was entered in the state district court on July 1969 and was affirmed by the circuit court on October 20, 1971.

The garnishment judgment was entered and enforced. It was not a final and valid judgment the said case was on appeal Appendix "7." will verify that fact. This is in violation of the laws of congress. Validity of a state statute on the ground it is repugnant to the Constitution or laws of the United States. In order the Fifth Circuit Court affirmed the judgment. This involves 28 U.S.C. 1252, 28 U.S.C. § 1257 (2.); 28 U.S.C. § 2284; 28 U.S.C. § 2403 may be applicable.

QUESTIONS PRESENTED

(1.) Is a confession or admission of the crime for which defendant is subsequently convicted, and also related acts showing a pattern of similar offenses, admissible into evidence when secured by a special agent for the F.B.I. who, during the interrogation, makes materially false statements of the law (relating to Fed. R. Crim. P. 20)? (Rule 20 is attached as Appendix 6.)

(2.) Is a confession or admission of the crime for which defendant is subsequently convicted, and also related actions showing a pattern of similar offenses, admissible into evidence when secured from defendant by a special agent for the F.B.I. who, upon being informed by defendant that he waives his right to counsel, makes materially false statements of the law?

(3.) Was there substantial evidence to support the conviction of the petitioner?

LAW RELIED UPON

Petitioner relies upon Fed. R. Crim. P. 20., Fed. R. Civil P. Rule 60 (B.) and the Sixth and Fourteenth amendments

to the United States Constitution. 28 U.S.C. 1343, 28 U.S.C. 2284, 28 U.S.C. 1343, and 42 U.S.C. 1985. Also 28 U.S.C. 1252, and 28 U.S.C. 1257 (2.).

STATEMENT

Defendant was found guilty by a jury of "malicious prosecution." Defendant was not charged by indictment, at the trial the state introduced witnesses who testified as follows:

(1.) That the application for Peace Bond was made against the plaintiff, appellee, respondent, the witnesses could not clearly identify that respondent did not threaten the petitioner.

(2.) That the defendant had an opportunity to cross the property of the 15 acres in question of ownership.

(3.) That on (expert testimony the peace bond introduced into evidence by the state had been signed by the defendant.

(4.) Defendant presented evidence there was a record of fraud concerning the land in question on the Deed Records of Wood County, Texas.

REASONS FOR ALLOWING THE WRIT

The confessions and admissions were tainted, Special Agent of the F.B.I. interviewed the defendant in Dallas County, Texas.

Concerning the title to the land, and the ownership of land in question. At the time the defendant was not advised of and did not sign a waiver of rights. The statement was not presented to the defendant. Although the defendant, according to the testimony of the F.B.I. agent, said he would discuss the matter without the aid of counsel, apparently the F.B.I. agent never determined who the defendant's counsel was or whether defendant in fact actually did have counsel. The agent did not attempt to explain the provisions of Rule 20 to the defendant during the interrogation and that his explanation was not only inadequate but completely misleading.

The state court entered a "Garnishment" judgment August 15, 1973, during the time the said case was on appeal to the Supreme Court of Texas Appendix "7.". The 115th Judicial District Court was without jurisdiction of the cause or matter. This is a "Conspiracy to Obstruct Justice" 42 s 1985 U.S.C. Rule 60 (b.) F.R. C. P. without a doubt defendant's confession and admission as to filing of criminal charge for which she was on trial constituted a substantial portion of the states case against her. The Fifth Circuit Court of Appeals, in directing itself to the issue affirmed the dismissal of temporary injunction filed under Rule 60 (B.) Fed. Rule Civil Procedure Appendix "8.".

In Rini v. Katzenbach, 7 Cir., 403 F. 2d. 697, the court directed itself specifically to the requirements in a Rule 20 proceeding. The defendant therein was interrogated on several occasions by an F.B.I. special agent. Each time the defendant was advised of his rights. The agent

> testified that he explained to [the defendant] the operation of [Rule 20] whereby the defendant could plead guilty.

The agent additionally testified

> He explained to Rini the operation of [Rule 20] whereby Rini could plead guilty in the Northern District of Illinois and the case would not be transferred to the Northern District of Indiana: but that if he did not plead guilty under Rule 20, it would be transferred.

Rini, Supra at 699.

> The crux of Rini is contained in the following paragraph:
>
> At no time did [the agent] testify that he warned Rini of the right to counsel in connection with the Rule 20 proceedings nor did he ever advise him that counsel could be appointed for him if he could not afford to employ counsel of his own choice. Without benefit of counsel, Rini signed a plea of guilty under Rule 20 while in Stateville.

Rini, Supra at 699.

> Likewise here, while the defendant was advised of his rights, including his right to counsel, he was not advised that his right to counsel extended to any Rule 20 proceedings. The agent undertook of his own volition to advise the defendant what he thought the meaning and interpretation was of Rule 20. Without that advice being given, would the defendant have confessed and admitted to conduct showing a pattern of activity similar to that for which he was tried?

It makes little difference whether the defendant actually enters a plea in a Rule 20 proceeding without knowing he has a right to counsel in that proceeding, (as in Rini), or whether, as here, he confesses to other acts, one of which he had already been charged with in Texas, after being "advised" of what a Rule 20 proceeding is, and without being advised of his right to counsel in such a proceeding.

The holding, (and reasoning) in Rini is instructive in the instant situation and the propositions therein applied by the Seventh Circuit are persuasive here. Not only is the absence of counsel crucial at certain stages of proceedings against the defendant but crucial also is the absence of explanation to a defendant, at a critical stage, that he has a right to counsel, for all proceedings in which he may participate, and that anything and everything he says may be used against him even if not directly related to the particular charge for which he is being interrogated.

Under this set of circumstances how could the defendant have known his confession and admissions would result in a new indictment rather than a proceeding under Rule 20? Who can say to what the defendant would have confessed or

admitted. To allow the decision of the Fifth Circuit to stand would be to condone and foster in a very real sense the giving of legal advice to defendants by biased or ill-informed law enforcement officers. Certainly the rationale of the Sixth and Fourteenth Amendments to the U.S. Constitution and of this court's decisions in Miranda and Escobedo do not mean that such law enforcement officers may give legal advice to defendants in lieu of and as substitution for legal advice from independent attorneys. The giving of such improper and incorrect legal advice should, as a matter of sound constitutional law, vitiate the defendant's confession and admission as well as his earlier, purported waiver of right to counsel.

LACK OF SUBSTANTIAL EVIDENCE TO SUPPORT THE CONVICTION

This issue is included in the present petition at the request of the petitioner.

There was not before the district court any evidence that petitioner had committed a crime for which she was indicted and tried. There was no evidence in the record that corroborated the testimony of the agent in regard to the statements that the petitioner allegedly made to the agent. Especially should the latter point be taken into consideration in light of the principle stated in the preceding argument by the petitioner regarding the impropriety of the admission into evidence of statements relating not only to the crime for which she was tried, but to similar acts.

Absent the confession, the corroborating evidence was very weak indeed.

Grant v. United States, 294 F. 66, States:

> The scope and purpose of testimony concerning similar offenses is limited . . . only in exceptional cases is the proof of such transactions admissible. Where a case falls within the exception, the proof must be clear and convincing. It will be unnecessary to discuss the point in this case as to whether or not this line of testimony fell within the exception to the general rule governing the proof of similar offenses, for the reason that in the case at bar we have no proof of an offense but merely proof of a suspicious circumstance.

So here, there is no exceptional case which would allow the introduction of proof of similar transactions, especially since the testimony of the agent as to those similar transactions was illicited after the defendant had been not only improperly advised by the agent as to Rule 20, but after the agent had improperly undertaken to advise the defendant without informing her of her right to counsel in the Rule 20 proceeding. The evidence showed that there was a peace bond issued by the J.P. C.C. Cathey and a forcible entry detainer suit filed by the said petitioner. There was misrepresentations and fraud concerning the title to land the Deed Records of Wood County, Texas verify that fact.

Absent not only the evidence admitted to the agent and obtained from the confession of defendant as to the specific crime for which she was tried, but the evidence of similar acts, the evidence was totally insufficient to convict the defendant.

CONCLUSION

Therefore, this petitioner respectfully requests that this court issue a Writ of Certiorari to review the judgment of the Fifth Circuit Court of Appeals.

Respectfully Submitted,

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CERTIFICATE OF MAILING

The undersigned hereby certifies that she has mailed on the ~~3rd~~ 10th day of June 1975 copies of Petitioners Petition for Writ of Certiorari, United States mail postage prepaid to:

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June 10 1975